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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
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13 **FRISKIT, INC.,**

14 **Plaintiff,**

15 **v.**

16 **REALNETWORKS, INC., et al.,**

17 **Defendants.**
18 _____/

NO. C 03-05085 WWS

**ORDER DENYING MOTION
TO STRIKE**

19
20 Judgment for defendants was entered on July 26, 2007. Notice of appeal
21 was filed on September 24, 2007. On September 19, 2007, Friskit filed three
22 documents:

23 1) Notice of filing of plaintiff's claim construction presentation
24 previously provided on July 10, 2007;

25 2) Notice of filing of errata to Ex. E to Zellweger declaration;

26 3) Notice of lodging of E-version of plaintiff's summary judgment
27 presentation.

28 Real has moved to strike the three notices of filing.

1 Rule 10(e)(2) of the Rules on Appellate Procedure states that "If anything
2 material to either party is omitted . . . from the record [on appeal] by error or
3 accident, the omission . . . may be corrected . . . (B) by the district court."
4

5 It appears that a portion of Ex. E, the direct testimony of Dr. Zellweger,
6 was inadvertently omitted from the version of Ex. E previously filed with the
7 court. Nothing new of substance is being added to the record and there is no
8 indication that to correct that omission would prejudice Real.
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10 The substance of the other two items, the claim construction presentation
11 and the electronic version of the Power Point presentation at the summary
12 judgment hearing, had previously been provided to the court. Although it appears
13 that some of the included videos had not been played in court, there is no
14 indication that correcting their omission would prejudice Real.
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16 Accordingly, the motion to strike will be denied.
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18 IT IS SO ORDERED.
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21 DATED: October 23, 2007


22 WILLIAM W SCHWARZER
23 Senior United States District Judge
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